

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

PETER J SMITH, *pro se*,

Plaintiff,

v.

**ALABAMA DEPARTMENT OF
TRANSPORTATION,**

Defendant.

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CASE NO. 2:06-cv-118-WKW

MOTION TO DISMISS

Defendant Alabama Department of Transportation (“ALDOT”) moves this Court to dismiss this action, and as grounds therefor, shows unto the Court as follows:

Plaintiff Peter Smith filed his complaint (Doc. No. 1) pursuant to Title VII of the Civil Rights Act of 1964 for employment discrimination based upon his race, sex, and age.

Jurisdiction is conferred upon this Court by 42 U.S.C. § 2000e-5.

Under the provisions of 42 U.S.C. § 2000e-5(f)(1) “for an employee to maintain a Title VII claim against a former employee, the employee has the initial burden of establishing that he filed his complaint within 90 days of his receipt of the Equal Employment Opportunity Commission’s (EEOC’s) right-to-sue letter.”

Plaintiff has attached to his complaint the EEOC right-to-sue letter, which indicates, by date stamp, that the document was mailed to Plaintiff at his current address on November 3, 2005. Prominently displayed on the face of this document is the following:

“Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this Notice**; or your right to sue based on this charge will be lost.”

(Emphasis in the original.) Plaintiff’s complaint, at paragraph 11, indicates that he received his right-to-sue letter on November 5, 2005.

Plaintiff's complaint bears the date "2-3-06" adjacent to his signature; however, his complaint was not filed with the Court until February 7, 2006. This complaint was not filed until the 94th day after the receipt of the right-to-sue letter.

Plaintiff's complaint was not timely filed as it was not filed within the 90-day period provided for by the above-referenced statute. Therefore, this complaint is due to be dismissed. *Green v. Union Foundry Company* 281 F.3d 1229 (11th.Cir. 2002) (holding that a complaint filed 97 days after the EEOC had mailed a right-to-sue letter was not timely filed and, thus, properly dismissed).

Wherefore, premises considered, this complaint is procedurally barred and due to be dismissed. By this pleading, Defendant ALDOT reserves the right to file its answer and affirmative defenses.

RESPECTFULLY SUBMITTED
TROY KING
ATTORNEY GENERAL

s/ Andrew W. Redd
Jim R. Ippolito, Jr. (IPP001)
Assistant Attorney General
Chief Counsel

Andrew W. Redd (RED001)
Assistant Attorney General
Assistant Counsel

ADDRESS OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that, on March 17, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECT system.

I also certify that, on this same date, I have served the foregoing on the following by placing a copy thereof, addressed as indicated below, in United States mail, First Class Postage prepaid: Mr. Peter J. Smith, 401 Boyd Road, Shorter, Alabama 36075.

s/ Andrew W. Redd
Andrew W. Redd (RED001)
Assistant Attorney General
Assistant Counsel

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